

1994

Applied Computer Techniques, Inc. v. Lee K. Shuster : Brief of Appellant

Utah Court of Appeals

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Thomas R. Blonquist; Attorney for Appellant.

Linda Faye Smith; Attorney for Appellee.

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940375

IN THE UTAH COURT OF APPEALS

Trial Court No. 920016945

Utah Court of Appeals No. 940375

Priority Classification 16

Priority No.

APPLIED COMPUTER TECHNIQUES, INC.

Defendant/Appellant,

v.

LEE K. SHUSTER,

Plaintiff/Appellee.

BRIEF OF APPELLANT

On Appeal From the Judgment of the Circuit Court,
State of Utah, Salt Lake County, Salt Lake Department
Honorable Dennis M. Fuchs

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Utah Court

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Employment Agreement
Memorandum Decision
Findings of Fact, Conclusions of Law and Judgment
Motion to Alter or Amend
Utah Code Annotated sections 78-2a-3(2)(d), 34-28-5(1)(a) and
(b), 34-28-5(2) and 34-27-1

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STATUTES

§ 78-2a-3(2)(d) Utah Code Ann.(1953, as amended) 1
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Honorable Dennis M. Fuchs

Appellant, "ACT" herein, submits the following as its Brief
herein:

JURISDICTIONAL AUTHORITY

Jurisdiction to review the final order and judgment entered
herein by the Circuit Court, State of Utah, Salt Lake County, Salt
Lake Department is vested in the Utah Court of Appeals pursuant to

Utah Code Annotated § 78-2a-3(2)(d)(1953, as amended).

NATURE OF THE PROCEEDINGS

This appeal is from an order entered by the Circuit Court granting Appellee's, "Shuster" herein, motion for summary judgment and denying ACT's motions for summary judgment and to alter or amend judgment.

ISSUE PRESENTED FOR REVIEW

The issue presented in this appeal is whether or not Shuster was a commissioned salesman or worked for wages and involves the interpretation of the written employment agreement executed by ACT and Shuster, the "Agreement" herein.

STANDARD OF REVIEW

The court should review the trial court's conclusions of law for correctness, giving no deference to the trial court's view of the law. Greenwood v. City of North Salt Lake, 817 P.2d 816,818 (Utah 1991).

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This case rises out of an Agreement executed by ACT and Shuster and the interpretation thereof on the question of whether Shuster, an employee of ACT, worked as a commissioned salesman or for wages.

II. COURSE OF PROCEEDINGS

On December 14, 1992 Shuster filed his complaint against ACT in the Circuit Court State of Utah of Salt Lake County, Salt Lake Department claiming that upon his termination as an employee of ACT, he was entitled to \$750 as wages for his work performed between October 1 and October 14, 1992. (R1)

ACT filed an answer denying that any sums were due to Shuster upon his termination, other than a minimum wage, because he worked as a commissioned salesman and made no sales between October 1 and October 14. (R20)

On October 26, 1993, Shuster filed an amended motion for summary judgment (R62) and on November 18, 1993, ACT filed its motion for summary judgment. (R105)

On February 17, 1994 the trial court denied ACT's and granted Shuster's motion for summary judgment for the following reasons:*

1. That there was a valid contract between the parties.
2. That the contract called for wages to be paid to Shuster in the amount of \$1,500 per month.
3. That at the time Shuster terminated his employment he was due wages as per the contract.

* The entire memorandum decision and the findings of fact, conclusions of law and judgment are part of the addendum to this Brief.

4. That section D of the employment contract would only apply if commissions were due and owing.

5. That ACT wrote the contract and therefore is bound by its terms and its interpretation.

6. That ACT did not pay the wages due to Shuster upon termination. (R141)

On March 25, 1994, ACT filed a motion to alter or amend judgment. (R155)

On May 23, 1994, the trial court denied ACT's motion to alter or amend judgment. (R193)

On June 21, 1994, ACT filed a notice of appeal and an undertaking for costs on appeal. (R198)

STATEMENT OF FACTS

The facts material to the issue presented in this appeal are:

1. ACT is in the business of selling computer hardware and accounting software to beer, wine, soda and bottled water distributors throughout the United States.

2. 80% of ACT's revenues come from new sales and 20% from revenues received from existing customers. (R91)

3. ACT is only able to stay in business by seeking out and selling its products to new customers. (R91)

4. On March 2, 1992, ACT hired Shuster as a commissioned salesman to call on potential new customers and attempt to sell

ACT's products to them. (R92)

5. With the hiring of Shuster, ACT's sales staff comprised two salesmen. (R92)

6. By agreement, Shuster received commissions in the amount of 20% of the gross profit on each sale made by Shuster to a new customer. (R92)

7. Also by agreement, Shuster received a draw or prepaid commissions based upon the length of time of his employment. (R92)

8. At the time Shuster terminated his employment, he was receiving prepaid commissions at the rate of \$1,500 per month. (R92)

9. During the period of Shuster's employment with ACT, 8 1/2 months, he earned commissions of \$1,831.30 but received prepaid commissions of \$11,632.86. (R97)

10. From October 1, 1992 to October 14, 1992, Shuster made no sales and, therefore, earned no commission for this period. (R98)

11. During the thirty (30) days following Shuster's termination of employment, none of his prospects purchased products from ACT. (R98)

SUMMARY OF ARGUMENT

Shuster was a commissioned salesman. Therefore, upon his termination he was not entitled to additional prepaid commissions, unless he had made sales during the two week prior to his

termination. The only compensation to which he was entitled was minimum wage for the number of hours worked.

ARGUMENT

I. THE CLEAR LANGUAGE OF THE EMPLOYMENT AGREEMENT SHOWS THAT SHUSTER WAS A COMMISSIONED SALESMAN.

ACT is in the business of selling computer hardware and accounting software and the life blood of its business is seeking out new customers and selling them ACT's products. This is so because 80% of ACT's revenues come from new sales and 20% come from existing customers.

ACT hired two salesmen, Shuster being one of them, to solicit new sales, i.e., make telephone contacts, travel to the business locations of potential customers, demonstrate ACT's products and attempt to convince said potential customers that it would be to their advantage to buy computer hardware and software from ACT. Because large revenues are made by the ACT at the time of the sale of products to a new customer, all outside salesmen received, as commission, 20% of the gross profit of each sale they close.

All sales persons employed by the ACT since it began doing business in 1978 have been employed on a commissions basis. In the

instant case, Shuster signed the Agreement* that clearly spelled out that he was to be paid a commission based upon his sales of ACT's goods and services.

The basis of Shuster's compensation is set forth in the Agreement between the parties at:

1. The opening sentence of paragraph 5.
2. Paragraph 5A which states "The commission rate shall be:"
3. Paragraph 5A 1) at page 2 talks about when a sale is "commissionable".
4. The example paragraph on page 2 refers to a "commission" and explains how the amount of commission is calculated.
5. Paragraph 5A 2) sets forth conditions and schedules as to when the sales of products or services will be "commissionable".
6. Paragraph 5A 2)(c) defines what the commission percentage will be.
7. Paragraph 5A 3) defines the commission to be received when a sale is made to a customer who buys multiple systems.
8. Paragraph 5B defines when commissions are payable.

* The entire employment agreement is part of the addendum to this Brief.

9. Paragraph 5C requires ACT to provide Shuster with the computation showing how the amount of Shuster's commission was determined.

10. Paragraph 5D provides that the employee is entitled to a commission for any sales that occur within thirty (30) days after termination, if Shuster was working with the purchasing customer.

11. Paragraph 6 defines the schedule for repayment of pre-paid commissions.

II. THE TRIAL COURT ERRED IN RULING THAT THE CONTRACT CALLED FOR WAGES TO BE PAID TO SHUSTER IN THE AMOUNT OF \$1,500 PER MONTH.

The Agreement is clear and not ambiguous. Its terms should be interpreted according to their plain and ordinary meaning. Equitable Life and Casualty Ins. Co. v. Ross, 849 P.2d 1187,1192 (Utah App. 1993). The plain and ordinary meaning of the Agreement is that Shuster is a commissioned salesman paid a draw against future commissions. See paragraph 6 of the Agreement.

The trial court's finding that the Agreement called for wages is erroneous because:

1. The Agreement consistently describes Shuster's "commissions" and never talks about wages.

2. Paragraph 10 of the Agreement makes no sense whatsoever unless Shuster is paid on a commission basis.

3. Paragraph 6 makes no sense unless Shuster is paid on a

commission basis.

4. The Agreement does not contain the word "wages", it uses the word "commission" 19 times, the words "draw against future commissions" once and the word "commissionable" 6 times.

In light of the foregoing the trial court erred in finding

1. "the contract called for wages...." and

2. "at the time Shuster terminated his employment he was due wages...."

III. THE PAYMENT OF WAGES REQUIREMENT DOES NOT APPLY TO ACT.

Utah law requires that employers pay employees' wages within 24 hours of the time of separation. See § 34-28-5(1)(a) Utah Code Ann. (1953, as amended). This section does not apply, however, to earnings of sales agents employed on a commission basis. See paragraph (b) if that section.

All of Shuster's claims for relief are based upon Utah statutes that protect wage earners. § 34-28-5(1)(a), §34-28-5(2) and §34-27-1 all refer to recovery of wages and none of these statutes are applicable to salesmen paid on a commission basis.

IV. A COMMISSIONED SALESMAN IS NOT ENTITLED TO RECEIVE FURTHER PREPAID COMMISSIONS UPON TERMINATION.

Because Shuster was a salesman paid on a commission basis who made no sales between October 1 and October 14, 1992 and voluntarily terminated on October 14, 1992, he is not entitled to

receive additional prepayment of future commissions. Upon termination, the salesman no longer calls on potential customers, therefore, there is no way he can earn additional commissions. When the salesman has no potential to earn future commissions, he is not entitled to receive nor is his employer obligated to pay him any prepayment of future commissions. There is nothing in the Agreement that gives Shuster that right nor is there a business practice that justifies such a policy.

As set forth in the record, Shuster terminated his employment on October 14, 1992. No prospective customer, with whom he had been dealing, bought products from the ACT during the period October 1 - 14, 1992, nor during the thirty (30) day period that followed. (R15) Therefore, there is nothing owed to Shuster on this account.

After being advised by the Utah Industrial Commission that commissioned salesman were entitled to receive minimum wage, ACT paid Shuster for 80 hours work at the minimum wage scale, minus applicable taxes. (R46)

Based upon the foregoing, it is the position of ACT that there is nothing owed to Shuster as a result of his employment with ACT.

CONCLUSION

The language of the Agreement is clear that Shuster was a commissioned salesman. Because he made no sales between October 1

and October 14 and voluntarily terminated on October 14, he is not entitled to receive additional prepayment of future commissions.

As a result, the court should reverse the trial court's ruling that granted Shuster's motion for summary judgment and grant ACT's motion for summary judgment on the basis that all sums owed by ACT to Shuster have been paid.

Respectfully submitted.

/s/

Thomas R. Blonquist

MAILING CERTIFICATE

I hereby certify that on this 17 day of October, 1994, I mailed, postage prepaid, two true and correct copies of the foregoing to:

Linda Faye Smith
Attorney at Law
c/o University of Utah
College of Law
Salt Lake City, UT 84112

/s/

Thomas R. Blonquist

ADDENDUM

EMPLOYMENT AGREEMENT

This Agreement is made this 2nd day of MARCH, 1992, by and between Applied Computer Techniques, a Utah corporation (hereinafter called "Employer") and LEE K. SAUSTER (hereinafter called "Employee"), witnesseth:

WHEREAS, Employer is engaged in the business of marketing computer data processing and information handling systems to end-users, including beer, wine, soda and bottled water distributors, and other distribution-oriented businesses;

WHEREAS, Employer desires to engage Employee to market its goods and services primarily to beer, wine, soda and bottled water distributors, and other distribution-oriented businesses located throughout the world;

WHEREAS, Employee desires to be employed by Employer subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual warranties, covenants and conditions herein contained, Employer and Employee hereby agree as follows:

1. **PURPOSE:** Employer engages Employee to market its goods and services to beer, wine, soda and bottled water distributors, and other distribution-oriented businesses located throughout the world.

It is *not* intended that the entire world shall be the exclusive territory of Employee. Employer reserves the right to modify the geographic scope of Employee's territory as well as the nature or type of prospective clients from whom Employee shall solicit business.

2. **TERM:** The term of employment under this Agreement shall begin on FEBRUARY 26 1992 and continue until terminated as herein provided.

3. **DUTIES AND OBLIGATIONS:** Employer hereby employs Employee to act as a sales representative whose duties shall include, but not be necessarily limited to the following:

A. Identify and contact prospective users of products of Employer in designated geographical areas;

B. Meet in person or by telephone with management representatives of such prospective users and survey their present and future data processing and information handling needs and recommend products of Employer where applicable;

C. Produce and provide to prospective customers timely written proposals detailing the costs, functions, and benefits of the proposed products and services of Employers;

D. Meet in person or by telephone with the decision-making representatives of prospective customers in an effort to obtain orders for products and services of Employer;

E. When directed by management, assist in the collection of all sums due from persons to whom the goods and merchandise of Employer are sold and in the adjustment of any complaints or disputes that may arise in connection with any sales made by him.

4. **PERFORMANCE:** Employee agrees to devote all of his time and efforts during normal business hours of Employer to the performance and duties on behalf of Employer in the role of sales representative. In carrying out his duties, Employee has no authority to incur obligations or make financial

representations or financial commitments on behalf of Employer, except as approved by Employer prior to such commitments.

5. COMPENSATION: For all of the services to be rendered by Employee in any capacity hereunder, Employer agrees to pay Employee a commission based upon Employee's sales of the goods and services offered by Employer.

A. The commission rate shall be:

1) Twenty (20) percent of the gross profit on each sale to a new customer which is attributable to Employee.

"New customer" is defined to be any firm or party who has not previously purchased from Employer.

"Gross profit" shall mean the difference between the total revenue actually received by Employer for each sale attributable to Employee, less the actual cost to Employer of the goods sold by Employee, less any charges to the customer for custom programming and/or training, less the actual cost to Employer of Employee's travel, meals and lodging attributed to each sale on a sale-by-sale basis, less any charge backs.

"Charge backs" shall mean products returned to Employer from customer for any reason and in any time frame, or products which are not fully paid for by buyer after a period of sixty (60) days. Charge backs to Employee due to failure by the buyer to remit payment in full will become commissionable to Employee once full payment has been received by Employer from buyer.

By way of example, if gross sales by Employee and cost of product related to such sales are \$25,000 and \$12,500 respectively, and the gross sale includes \$1,000 of custom programming and/or training, and the cost of Employee's travel, meals and lodging associated with the sale is \$1,000, and a customer returned a \$1,000 product for which the Employee had previously been paid a commission, the gross profit would be computed as follows:

\$ 25,000	Gross sales
- 12,500	Cost of product
- 1,000	Custom programming and/or training
- 1,000	Cost of travel, meals, and lodging
- <u>1,000</u>	Charge back for returned product
\$ 9,500	Gross profit

$$\$9,500 \times .20 = \$1,900$$

Any sale which is deferred because of the unavailability of required custom programming to be performed by Employer will be considered to be a sale to a "New Customer" for the purpose of determining the commission rate.

2) Sales of products or services to an existing customer will be commissionable to Employee under the following conditions and according to the following commission schedule:

(a) The sale is directly attributable to Employee's efforts;

(b) Employee was responsible for the initial sale made to the customer;

(c) The sale to the existing customer is made within one year of customers' initial purchase. The following schedule will be made to determine the commission percentage paid to Employee:

<u>Days Following Initial Purchase</u>	<u>Commission rate</u>
1 through 90 days	Twenty (20) percent
91 through 270 days	Fifteen (15) percent
271 through 365 days	Ten (10) percent

"Existing customer" is defined as any firm or party who has previously purchased from Employer.

3) Sales to a multiple system customer will be commissionable to Employee at eleven (11) percent of the gross profit on each sale, provided that:

- (a) The sale is directly attributable to Employee's efforts;
- (b) Employee was responsible for the initial sale made to the customer.

"Multiple system customer" is defined to be any firm or party who purchases more than one software license for the same software module(s).

B. The commission provided for herein shall be payable to Employee on the next occurring regular payday of Employer immediately after becoming a commissionable sale.

"Next occurring regular payday" shall mean the earliest of either the sixteenth day of the current month or the first day of the following month.

"Commissionable sale" shall mean a sale for which Employee has received the Employer's Purchase Agreement from the prospect, properly signed and executed by a duly authorized representative of the prospect firm or institution, and a deposit of not less than seventy-five (75) percent of the total purchase price.

C. Employer shall furnish Employee upon request the data and computations used in arriving at the commission amount.

D. In the event Employee ceases to be employed by Employer for any reason, Employee shall be entitled to commissions as described herein for commissionable sales received by Employer which are attributable to Employee's efforts for a period of thirty (30) days following Employee's termination, less any charge backs arising from previous sales by Employee which may occur during the above 30-day period following termination, less any outstanding draws which may exist.

6. **DRAW:** Employee will be paid a draw against future commissions according to the following schedule:

<u>Days Following Employment</u>	<u>Draw</u>	
1 through 60 days	\$2,800 per month	02/26/92 - 04/26/92
61 through 90 days	\$2,200 per month	04/27/92 - 05/26/92
91 days on	\$1,500 per month	05/27/92 -

If commissions earned do not equal the draw per month as outlined above, Employer shall add that amount necessary to cause Employee's gross pay to equal the monthly amount shown, such amount to be considered a draw against future commissions. In any month in which commissions earned exceed

\$2,500 and a draw balance exists, the excess over \$2,500 shall be used to recover any outstanding draws previously paid to Employee.

7. PRODUCT PRICING AND POLICIES. All prices, discount policies, sales and service policies will be established by Employer and adhered to by Employee. Employer shall promptly notify Employee of all price and policy changes and new product availability.

8. SALES ACCEPTANCE. Employer reserves the right of final decision on any sales, including acceptance of any orders. Employee will obtain written approval in advance on all proposals offered in written form to prospective customers.

9. INSURANCE: Employee shall be entitled to coverage under Employer's existing health and accident plan if he qualifies thereunder and is in accordance with the terms of such written insurance policy and program. Coverage shall be provided at no cost beginning 90 days after employment date. Should Employee elect to cover dependents, Employer shall deduct the premium from Employee's check on a monthly basis and at the then-current rates. Employer shall advise Employee of any changes in the insurance policies and company policies with respect thereto prior to the effective date of any such change.

10. VACATION: Employee shall be entitled to receive vacation pay according to the following schedule:

First year	1/52 of total earned commission during the first year of employment
Second through eighth year	2/52 of total earned commission during each year of employment
Ninth year and on	3/52 of total earned commission during each year of employment

"Earned commission" shall mean the commission amount paid to Employee for sales directly attributable to Employee.

Pay will be paid as a bonus each year on the anniversary date of Employee's employment as stipulated in paragraph 2, Terms.

11. EXPENSES: Employer shall reimburse Employee for all expenses incurred by Employee in furtherance of his duties and obligations under this Agreement contingent upon prior approval of such expenses by Employer and receipt of proper documentary evidence in support of such expenses. In that regard, Employee agrees to report his expenses on a weekly basis in a daily diary format. Expenses shall be broken down by client and shall be on forms acceptable to Employer.

Only the following items shall be reimbursable:

A. Actual travel and lodging expense directly related to sales and marketing efforts.

B. Meals expense while out-of-town overnight, to a maximum of \$25 per day.

C. In the event Employee must use his own automobile, a mileage allowance of 25.5 cents per mile will be paid, provided Employee submits a mileage log identifying actual odometer readings and other documentary evidence as may be required by Employer.

In addition, Employer shall furnish Employee with a telephone credit card and/or other means of covering the costs associated with making long-distance, business-related telephone calls.

12. ITEMS FURNISHED BY EMPLOYER:

A. Employer shall provide Employee with computer hardware and software for demonstration purposes and for use in preparing presentation material for clients and prospective clients as deemed necessary by Employer. Hardware and software furnished Employee shall remain the property of Employer and shall be returned to Employer promptly upon termination of this Agreement. Employee shall be liable to Employer for the loss, theft or damage to the software and/or hardware while in employee's personal possession. When necessary to release software and/or hardware to any third party, Employee shall exercise utmost judgment and insure the equipment wherever possible.

B. Employer shall furnish Employee with client and prospective client information which shall include but not be limited to mail and telephone lists, as well as proprietary, demographic information pertaining to clients and prospective clients. Upon termination of this Agreement, Employee shall promptly return all of such data and information to Employer.

13. TERMINATION: Either party may terminate this Agreement at any time, without cause and without advance notice.

14. DEATH: In the event Employee's death occurs during the term of this Agreement, the Agreement shall terminate immediately and Employee's legal representative shall be entitled to receive any compensation due to Employee under the provisions outlined above.

15. CONFIDENTIALITY: Since Employee will have access to the information which a customer of Employer may deem to be confidential, Employee agrees that he will keep all such information, data, and materials of such customers fully confidential and shall not disclose such information or data to anyone who is not an employee or employer of the customer except on specific order of a court of a competent jurisdiction. Employee further agrees that all written materials, software programs, tapes, card decks, or other physical embodiment of any software program relating to the business of Employer and its customer, whether prepared by Employee or received by Employee during his employment or thereafter, and any copies thereof all belong solely to Employer.

Employee further agrees that all company information including contracts, customer lists, prospect lists, proprietary product information, company procedures and policies, etc. shall be deemed to be confidential and all such material shall belong solely to Employer despite the fact that they may have been prepared in part or wholly by Employee or Employee may have received copies thereof during the course of his employment. At any time during or after the employment period, Employee will upon the request of Employer deliver all of such items to Employer and shall retain no copies. All of such materials written or produced by Employee or under his supervision at any time during his employment shall be and are owned by Employer if they relate in any manner to the business of Employer either now or in the future. Employee will not during or after the term of his employment furnish to any individual, firm or corporation any list of customers or other information relating to Employer's business. He will at all times protect all proprietary information of Employer and will not disclose or use any of the computer programs and materials related to it which are used by Employer in its business which are proprietary to Employer.

16. COVENANT NOT TO COMPETE: Employee agrees that during his employment and for a period of two years immediately following the termination of his employment for any reason he will not either alone or with or on behalf of any other person, firm, partnership, or corporation undertake to compete with Employer or seek to divert business or destroy or affect the business relationship that exists between Employer and its customers.

17. NO INTERFERENCE OF EMPLOYMENT: Following Employee's termination of employment, Employee will not solicit for hire any current employee of Employer.

18. REPRESENTATIONS AND WARRANTIES OF EMPLOYEE: Employee represents and warrants as follows:

A. That by entering into this Agreement and performing the duties and obligations outlined herein, he is not in violation of any contract of employment previously entered into with another employer;

B. That during the term of this Agreement, Employee will not misrepresent any of the products or services offered by Employer;

C. That during the term of this Agreement, Employee will not violate the copyright or trade secret provisions of any software license agreement, non-disclosure agreement, or confidentiality agreement, Employer has executed or may be required to execute during the course of Employee's employment.

In the event a legal action is threatened or maintained against Employer arising out of or related to Employee's warranties and representations, Employee agrees to indemnify and hold harmless Employer for all legal costs and expenses associated with the defense of such actions, as well as any monetary judgments taken against Employer as a result of such actions.

19. EFFECT OF WAIVER: The waiver of any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

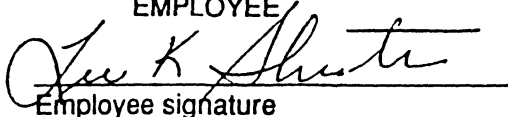
20. NOTICE: Any and all notices required herein shall be sufficient if furnished in writing, sent by registered mail, to the respective parties at their address described below following their signatures to this Agreement. Such other addresses as needed may hereinafter be supplied by either party.

21. ENTIRE AGREEMENT: This Agreement contains the entire agreement of the parties and supersedes all prior written and oral communications.

22. AMENDMENT: Any amendment, modification or change shall be in writing and signed by both parties and shall be amended hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above-written.

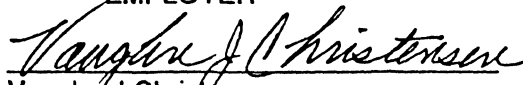
EMPLOYEE


Employee signature

LEE K. SHUSTER
Employee name printed

1337 E. YALE AVE
SALT LAKE CITY, UT
84105-1612
Employee address

EMPLOYER


Vaughn J Christensen
Applied Computer Techniques
772 East 3300 South, #200
Salt Lake City, UT 84106

**CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT**

LEE SHUSTER,)	
)	MEMORANDUM DECISION
Plaintiff,)	
)	Case No. 920016945 CV
VS.)	
)	Judge Dennis M. Fuchs
APPLIED COMPUTER TECHNIQUES,)	
INC.,)	
Defendant.)	

This matter having come before the Court on both Plaintiff's and Defendant's Motions for Summary Judgment and the Court having heard arguments and reviewed the memorandums as submitted hereby:

A) Denies Defendant's Motion for Summary Judgment and

B) Grants Plaintiff's Motion for Summary Judgment for the following reasons:

1. There was a valid contract between the parties.

2. The contract called for wages to be paid to Plaintiff in the amount of \$1,500 per month.

3. That at the time Plaintiff terminated his employment he was due wages as per the contract.

4. That Section D of the employment contract would only apply if commissions were due and owing.

5. That Defendant wrote the contract and therefore is bound by its terms and its interpretation.

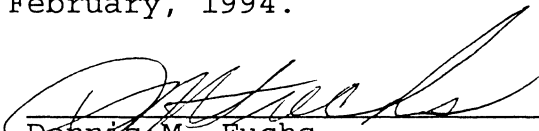
6. That Plaintiff did not pay the wages due Defendant upon termination.

7. That Plaintiff is entitled to a penalty of 60 days wages as per the statute.

8. That Plaintiff is entitled to the contract amount and not minimum wage.

Therefore the Court grants judgment in the amount of \$410.00 prayed for in the complaint and the penalty of \$3,000.00 as prayed for in the complaint and attorneys fees as provided in the statute. Plaintiff is awarded attorney fees as prayed for by the affidavit. Defendant shall have 10 days to challenge the attorney fees and request a hearing if appropriate. Plaintiff is to submit a judgment for the Court's signature.

Dated this 12 day of February, 1994.



Dennis M. Fuchs
Circuit Court Judge

CERTIFICATE OF MAILING

I certify that I mailed a copy of the above Memorandum Decision on this 18th day of February, 1994, to:

THOMAS R. BLONQUIST
40 South 600 East
Salt Lake City, UT 84102

LINDA FAYE SMITH
C/O UNIVERSITY OF UTAH
COLLEGE OF LAW
Salt Lake City, UT 84112


Deputy Clerk

FILED

MAR 21 1994

Third Circuit Court
Salt Lake Department

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

LEE K. SHUSTER,

Plaintiff,

vs.

APPLIED COMPUTER
TECHNIQUES, INC.

Defendant.

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FINDINGS OF FACT AND

CONCLUSIONS OF LAW

Civil No. 920016945

Judge Dennis M. Fuchs

The above-captioned matter came for hearing on both the Plaintiff's and the Defendant's Motions for Summary Judgment on February 2nd, 1994, the Honorable Dennis M. Fuchs presiding. The parties having filed motions and affidavits, and the court having reviewed the files and the pleadings contained therein and having heard oral argument; the Court makes and enters the following:

FINDINGS OF FACT

These material facts have not been contested by the defendant ACT and are undisputed. Accordingly, this Court makes the following findings:

1. The parties entered into a valid contract for employment

on or about February 26, 1992, a copy of which is attached to the Complaint as Exhibit A.

2. From February 26, 1992 to October 14, 1992 the plaintiff Mr. Shuster worked for the defendant ACT, "devoting all his time and energy during normal business hours" to ACT's business.

3. From February 26, 1992 to September 30, 1992, ACT paid Mr. Shuster the "gross pay" provided for under Paragraph 6 of the Employment Agreement, since the commissions earned never exceeded such "gross pay."

4. The employment relationship ended on October 15, 1992. At that time Mr. Shuster made written demand to ACT for payment of wages for his work from October 1, 1992 through October 14, 1992.

5. On October 19, 1992 ACT wrote Mr. Shuster and refused to pay any wages whatsoever for this two-week period, on the grounds that "no commissions were earned" during that period. ACT paid no wages at all at that time for that two-week period of work.

6. On November 19, 1992, Mr. Shuster again wrote and demanded the "gross pay" of \$750 provided for in the Employment Agreement. Mr. Shuster further informed ACT that its failure to pay him any amount whatsoever not only violated the Agreement but violated state and federal minimum wage law.

7. On or about December 1, 1992 ACT paid Mr. Shuster gross pay of \$340, representing minimum wage for 80 hours of work; but again

failed and refused to pay the full gross pay totalling \$750 as demanded in accordance with the Employment Agreement.

8. Mr. Shuster made written demand for "gross pay" of \$750 under the Agreement on or about November 19, 1992 which was more than 15 days before bringing this action on December 14, 1992.

9. Mr. Shuster commenced this action on December 14, 1992 which is within 60 days of his separation from ACT's employment.

CONCLUSIONS OF LAW

1. The interpretation of the contract between defendant employer ACT and plaintiff employee Mr. Shuster is a matter of law.

2. The Employment Agreement is unambiguous. In paragraph 6 it calls for wages to be paid to Mr. Shuster in the minimum amount of \$1500 gross pay per month.

3. At the time Mr. Shuster's employment ended he was entitled to wages due under the Employment Agreement, paragraph 6, for two weeks of work, or \$750 gross pay. Paragraph 5 D limited ACT's obligation to pay commissions to Mr. Shuster after his employment ended; it did not alter ACT's obligation to pay wages as per Paragraph 6.

4. Mr. Shuster is today entitled to \$410 wages under the contract.

5. Because ACT did not pay Mr. Shuster the wages due and owing


upon termination, Mr. Shuster is entitled to a penalty of 60 days wages under the Utah Payment of Wages Act (Utah Code Ann. 34-28-5) of \$3000.

6. Mr. Shuster made a written demand for wages at least 15 days before bringing this action and the demand did not exceed the amount justly due; but ACT did not pay Mr. Shuster the wages due him. Accordingly, pursuant to Utah Code Ann. 34-27-1 Mr. Shuster is entitled to reasonable attorneys fees for prosecuting this action.

7. It is reasonable, in light of the time, effort, difficulty, and other relevant factors to award Mr. Shuster attorneys fees and costs as requested in his attorneys' affidavit of \$1761.07.

Therefore the Court grants judgment in the amount of \$410 prayed for in the complaint and the penalty of \$3000 as prayed for in the complaint and the attorneys' fees as provided for in the statute. Plaintiff is awarded attorney fees of \$1761.07 as prayed for by the affidavit.

Dated: March 21, 1994


Dennis M. Fuchs
Circuit Court

FILED
MAR 21 1994
Third Circuit Court
Salt Lake County

CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

LEE K. SHUSTER,
Plaintiff,

vs.

APPLIED COMPUTER
TECHNIQUES, INC.
Defendant.

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JUDGMENT

Civil No. 920016945 CV

Judge Dennis M. Fuchs

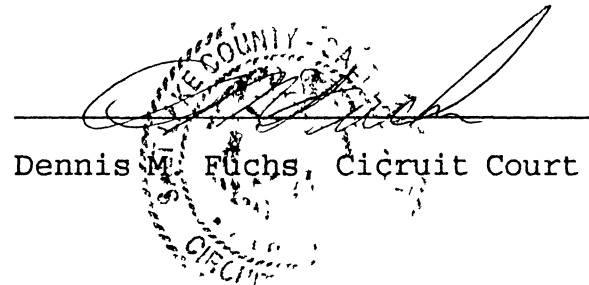
This action came before the Court, Honorable Dennis M. Fuchs, Circuit Judge, presiding, on both Defendant's and Plaintiff's Motions for Summary Judgment pursuant to Rule 56 of Utah Rules of Civil Procedure. For the reason that there are no disputed issues of material fact and Plaintiff is entitled to Judgment as a matter of law on all counts,

It is ordered and adjudged:

That Plaintiff, Lee Shuster recover of the defendant Applied Computer Techniques, Inc. the sum of \$5171.07, (representing

\$410.00 for contract damages, \$3000.00 for civil penalties and the sum of \$1761.07 for attorneys' fees and costs) with interest thereon at the rate of ^{5.61%}~~12%~~ as provided by law.

Dated at Salt Lake City, UT, this 21st date of March, 1994.


Dennis M. Fuchs, Circuit Court Judge

Clerk of Court

CERTIFICATE OF MAILING

THIS IS TO CERTIFY that a true and correct copy of the foregoing Judgment were mailed, postage prepaid, on this ____ th day of March, 1994, to:

Linda Faye Smith (4460)
Attorney for Plaintiff
c/o University of Utah
College of Law
Salt Lake City, UT 84112

Thomas R. Blonquist (0369)
Attorney for Defendant
40 South 600 East
Salt Lake City, UT 84102

Clerk

FILED

56 MAR 25 PM 4:26

CLERK J. L. ...
SALT LAKE DEPARTMENT

Thomas R. Blonquist, Esq., (0369)
Attorney for Defendant
40 South 600 East
Salt Lake City, UT 84102
Telephone: (801) 533-0525

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

LEE K. SHUSTER,)	MOTION TO ALTER OR AMEND
)	JUDGMENT
Plaintiff,)	
v.)	
)	Civil No. 920016945CV
APPLIED COMPUTER)	
TECHNIQUES, INC.,)	Judge Dennis M. Fuchs
Defendant.)	

Pursuant to Rule 59(e) of the Utah Rules of Civil Procedure, Defendant moves the court to alter or amend the judgment entered in the above entitled matter on the 21st day of March, 1994, based on the following grounds and reasons:

1. All sums received by Plaintiff under the contract were draws against future commissions, not wages.

2. At the time Plaintiff terminated his employment, there were no sales commissions due him, therefore, he was only entitled to receive compensation based upon the minimum wage.

3. Under paragraph d of the agreement, Plaintiff was entitled to receive a commission on any sales attributable to his efforts for a period of 30 days following his termination.

4. During the 30 day period following Plaintiff's

termination of employment, none of his customers purchased products from the Defendant.


5. As a result, on December 1, 1992, Defendant sent Plaintiff a check for 80 hours of work at \$4.25 per hour, less applicable taxes.

6. Defendant paid the wages due Plaintiff upon termination.

7. Plaintiff would only be entitled to the contract amount if he continue his employment with the Defendant thereby entitling him to continue to receive draws against commission, however, when he terminated his employment he was only entitled to receive minimum wage for the hours he worked, which he did receive.

The foregoing is set forth in the affidavits of Plaintiff and Defendant on file herein and based thereupon, Defendant urges that the court grant this motion to alter or amend judgment.

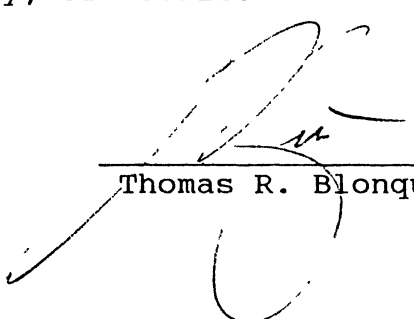
DATED this 25th day of March, 1994.



Thomas R. Blonquist

MAILING CERTIFICATE

I hereby certify that on this 25th day of March, 1994, I mailed, postage prepaid, a true and correct copy of the foregoing to: Linda Faye Smith, Attorney at Law, c/o University of Utah, College of Law, Salt Lake City, UT 84112.



Thomas R. Blonquist

- (c) reapportionment of election districts;
- (d) retention or removal of public officers; and
- (e) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. 1992

78-2-3. Repealed. 1986

78-2-4. Supreme Court — Rulemaking, judges pro tempore, and practice of law.

(1) The Supreme Court shall adopt rules of procedure and evidence for use in the courts of the state and shall by rule manage the appellate process. The Legislature may amend the rules of procedure and evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature.

(2) Except as otherwise provided by the Utah Constitution, the Supreme Court by rule may authorize retired justices and judges and judges pro tempore to perform any judicial duties. Judges pro tempore shall be citizens of the United States, Utah residents, and admitted to practice law in Utah.

(3) The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to the practice of law. 1986

78-2-5. Repealed. 1988

78-2-6. Appellate court administrator.

The appellate court administrator shall appoint clerks and support staff as necessary for the operation of the Supreme Court and the Court of Appeals. The duties of the clerks and support staff shall be established by the appellate court administrator, and powers established by rule of the Supreme Court. 1986

78-2-7. Repealed. 1986

78-2-7.5. Service of sheriff to court.

The court may at any time require the attendance and services of any sheriff in the state. 1988

78-2-8 to 78-2-14. Repealed. 1986, 1988

CHAPTER 2a

COURT OF APPEALS

Section	
78-2a-1.	Creation — Seal.
78-2a-2.	Number of judges — Terms — Functions — Filing fees.
78-2a-3.	Court of Appeals jurisdiction.
78-2a-4.	Review of actions by Supreme Court.
78-2a-5.	Location of Court of Appeals.

The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court. 1988

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;
- (b) appeals from the district court review of:
 - (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
 - (ii) a challenge to agency action under Section 63-46a-12.1;

- (c) appeals from the juvenile courts;
 - (d) appeals from the circuit courts, except those from the small claims department of a circuit court;
 - (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;
 - (f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;
 - (g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;
 - (h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons except in cases involving a first degree or capital felony;
 - (i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;
 - (j) appeals from the Utah Military Court; and
 - (k) cases transferred to the Court of Appeals from the Supreme Court.
- (3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.
- (4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. 1992

78-2a-4. Review of actions by Supreme Court.

Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. 1986

78-2a-5. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state. 1986

CHAPTER 3 DISTRICT COURTS

Section

- 78-3-1 to 78-3-2. Repealed.
- 78-3-3. Term of judges — Vacancy.
- 78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when court does not exist.
- 78-3-5. Repealed.
- 78-3-6. Terms — Minimum of once quarterly.
- 78-3-7 to 78-3-11. Repealed.
- 78-3-11.5. State District Court Administrative System.
- 78-3-12. Repealed.
- 78-3-12.5. Costs of system.
- 78-3-13. Repealed.
- 78-3-13.4. Counties joining court system. Pro.

Section

- 78-3-17.5. Application of savings accruing to counties.
- 78-3-18. Judicial Administration Act — title.
- 78-3-19. Purpose of act.
- 78-3-20. Definitions.
- 78-3-21. Judicial Council — Creation — members — Terms and election responsibilities — Reports.
- 78-3-22. Presiding officer — Compensation — Duties.
- 78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.
- 78-3-24. Court administrator — Powers, duties, and responsibilities.
- 78-3-25. Assistants for administrator of courts — Appointment of trial executives.
- 78-3-26. Courts to provide information and statistical data to administrator of courts.
- 78-3-27. Annual judicial conference.
- 78-3-28. Repealed.
- 78-3-29. Presiding judge — Election — Compensation — Powers — Duties.
- 78-3-30. Duties of the clerk of the district court.
- 78-3-31. Court commissioners — Qualifications — Appointment — Functions — Compensation — Election — Term — Repealed by rule.

78-3-1 to 78-3-2. Repealed.

1971, 1992

78-3-3. Term of judges — Vacancy.

Judges of the district courts shall be appointed until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office for judges of the district courts is six years, and commences on the first Monday in January, next following the general election. A judge whose term expires may serve until the request of the Judicial Council, until a successor is appointed and qualified.

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when court does not exist.

(1) The district court has original jurisdiction over all matters civil and criminal, not excepted in the Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry out effect their orders, judgments, and decrees.

(3) Under the general supervision of the presiding officer of the Judicial Council and subject to the rules established by the Judicial Council, cases filed in the district court, which are also within the concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts or the district judge in single judge districts. The transfer of cases may be made upon the court's own motion or upon the motion of either party for adjudication.

performed within this state any order, check or draft unless it is negotiable and payable in cash, on demand, without discount, at a bank, the name and address of which must appear on the instrument.

(3) If an employee voluntarily authorizes an employer to deposit wages due, or an advance on wages to be earned, in a bank, savings and loan association, credit union or other financial institution, the employer may so deposit until the authorization is terminated.

(4) If any deduction is made from the wages paid, the employer shall, either semimonthly or monthly at the employer's option, furnish the employee with a statement showing the total amount of each deduction.

(5) It is unlawful for an employer to withhold or divert part of an employee's wages unless the employer is required to withhold or divert the wages by court order, state or federal law, or unless the employee expressly authorizes the deduction in writing, or the employer presents evidence which in the opinion of the hearing officer or the administrative law judge would warrant an offset.

(6) It is unlawful for an employer to require an employee to rebate, refund, offset, or return any part of the wage, salary, or compensation to be paid to the employee except as provided in Subsection (5).

(7) An employer is not prohibited from pursuing legitimate claims of damages, offsets, or recoupments in a civil action against an employee.

1969

34-28-4. Notice of paydays — Failure to notify a misdemeanor.

(1) It shall be the duty of every employer to notify his employees at the time of hiring of the day and place of payment, of the rate of pay, and of any change with respect to any of these items prior to the time of the change. Alternatively, however, every employer shall have the option of giving such notification by posting these facts and keeping them posted conspicuously at or near the place of work where such posted notice can be seen by each employee as he comes or goes to his place of work.

(2) Failure to post and to keep posted any notice or failure to give notice as prescribed in this section shall be deemed a misdemeanor and punishable as such.

1969

34-28-5. Separation from payroll — Resignation — Cessation because of industrial dispute.

(1) (a) Whenever an employer separates an employee from his payroll the unpaid wages of the employee become due immediately, and the employer shall pay the wages to the employee within 24 hours of the time of separation at the specified place of payment.

(b) This section does not apply to the earnings of a sales agent employed on a commission basis who has custody of accounts, money, or goods of his principal if the net amount due the agent is determined only after an audit or verification of sales, accounts, funds, or stocks.

(2) In case of failure to pay wages due an employee within 24 hours of written demand, the wages of the employee shall continue from the date of demand

ten demand for payment is not entitled to any under this subsection.

(3) If an employee does not have a written contract for a definite period and resigns his employment, wages earned become due and payable not later than 72 hours after the resignation, unless the employee gave 72 hours previous notice of his intention to resign, in which case the employee shall receive wages at the specified place of payment at the resignation.

(4) If work ceases as the result of an industrial dispute, the wages earned and unpaid at the time of cessation become due and payable at the next payday, as provided in Section 34-28-3, in full, without abatement or reduction, all amounts earned by persons whose work has been suspended as a result of the industrial dispute, together with any other guaranty held by the employer for the performance of the duties of the employment.

34-28-6. Dispute over wages — Notice and acceptance.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the balance of the wages within the time specified in the notice; but acceptance by the employee of such payment made shall not constitute a release of the employer from the balance of his claim.

34-28-7. Payment at more frequent intervals — Permitted — Agreements to the contrary act prohibited.

Nothing contained in this chapter shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals, or in full amounts or in full when or before due, but no provision of this act can in any way be contravened by a mutual agreement.

34-28-8. Subcontractors — Compliance with act.

Whenever any person shall contract with another person for the performance of work, then it shall be the duty of such person to provide in the contract that the wages earned pursuant to the contract shall be paid in accordance with the provisions of this chapter. In the event that any wages earned under such contract shall not be paid as required in this section, such person shall be civilly liable for all wages earned by such person under such contract in the same manner as if the employees entitled to such wages were directly employed by such person.

34-28-9. Enforcement of chapter.

(1) (a) The Industrial Commission shall have the duty to enforce compliance with this chapter, investigate alleged violations of this chapter, and determine the validity of any claim for any violation of this chapter filed with it by an employee.

(b) The amount of \$50 constitutes the minimum wage claim that the commissioner may accept.

(c) The wage claim must be filed within one year of the date the wages were earned.

(2) The Industrial Commission may assess a civil penalty against an employer who fails to pay an employee

and when performed. Any person with whom any such claim shall have been filed shall give immediate notice thereof by mail to all persons interested, and, if the claim is not contested as provided in Section 34-26-3, it shall be the duty of the person or the court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized. 1969

34-26-3. Claim — Exceptions — Contest.

Any person interested may within ten days after the notice of presentment of said statement contest such claims, or any part of them, by filing exceptions to them supported by affidavit with the officer or court having the custody of such property, and thereupon the claimant shall be required to reduce his claim to judgment in some court having jurisdiction before any part thereof shall be paid. The person contesting shall be made a party defendant in any such action and shall have the right to contest such claim, and the prevailing party shall recover proper costs. 1969

34-26-4. "Wages" defined.

Whenever used in this chapter, "wages" shall mean all amounts due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount. 1969

CHAPTER 27

ATTORNEYS' FEES IN SUITS FOR WAGES

Section

34-27-1. Reasonable amount — Taxed as costs.

34-27-1. Reasonable amount — Taxed as costs.

Whenever a mechanic, artisan, miner, laborer, servant, or other employee shall have cause to bring suit for wages earned and due according to the terms of his employment and shall establish by the decision of the court that the amount for which he has brought suit is justly due, and that a demand has been made in writing at least fifteen days before suit was brought for a sum not to exceed the amount so found due, then it shall be the duty of the court before which the case shall be tried to allow to the plaintiff a reasonable attorneys' fee in addition to the amount found due for wages, to be taxed as costs of suit. 1969

CHAPTER 28

PAYMENT OF WAGES

Section

34-28-1. Public and certain other employments excepted.

34-28-2. Definitions.

34-28-3. Regular paydays — Currency or negotiable checks required — Deposit in financial institution — Statement of total deductions — Unlawful withholding or diversion of wages.

34-28-4. Notice of paydays — Failure to notify a misdemeanor.

34-28-7. Payment at more frequent intervals — Agreements to contract prohibited.

34-28-8. Subcontractors — Compliance with

34-28-9. Enforcement of chapter.

34-28-10. Employers' records — Inspection commission.

34-28-11. Commission may employ assistants

34-28-12. Violations — Misdemeanor.

34-28-13. Assignment of wage claims — Poverty commission — Award of attorney fees.

34-28-14. Actions by commission as assignor — Costs need not be advanced.

34-28-15 to 34-28-18. Repealed.

34-28-19. Retaliation prohibited — Resolution, cease and desist orders.

34-28-1. Public and certain other employments excepted.

None of the provisions of this chapter shall apply to the state, or to any county, incorporated city or other political subdivision, or to employers and employees engaged in farm, dairy, agricultural, viticultural or horticultural pursuits or to stock or poultry raising, or to household domestic service, or to other employment where an agreement exists between employer and employee providing for different terms of payment, except the provisions of Section 34-28-5 shall apply to employers and employees engaged in farm, dairy, agricultural, viticultural, cultural or stock or poultry raising.

34-28-2. Definitions.

As used in this chapter:

(1) The word "employer" includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this state and any agent or officer of any of the above mentioned classes, employing any person in state.

(2) The word "wages" means all amount due the employee for labor or services, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

34-28-3. Regular paydays — Currency or negotiable checks required — Deposit in financial institution — Statement of total deductions — Unlawful withholding or diversion of wages.

(1) Employers shall pay the wages earned by each employee semimonthly or twice during each calendar month on days to be designated in advance by the employer as the regular payday. The employer shall pay for services rendered during each semimonthly period within ten days after the close of that period if the semimonthly payday falls on a Saturday, Sunday or legal holiday, payment of wages earned during the semimonthly period shall be made on the day preceding the Saturday, Sunday, or legal holiday. If the employer hires employees on a yearly salary basis, the employer may pay the employee on a monthly basis by paying on or before the seventh of the month following the month for which services were rendered. All wages shall be paid in full to the employee